IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Roopchand & Ors. Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.328/2006

DATE OF ORDER :: Sept. 19, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.H.M.Saraswat, for the petitioners.
Mr.Ashok Upadhyaya, Public Prosecutor.
Mr. Lalit Vyas, for non-petitioner No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt.16.1.2006 passed by the Additional Chief Judicial Magistrate (Railway), Jodhpur (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of the offences under section 147, 148, 323, 341, 342 and 352 I.P.C. and issued the process against the present petitioners

I have heard learned counsel for the petitioners, the Public Prosecutor for the State and the counsel appearing for the

complainant-non-petitioner No.2.

It is contended by the learned counsel for the petitioners that the occurrence took place on 20.1.2001 and the FIR was lodged on the very day i.e. 20.1.2001, however, the police after investigation, filed the negative final report before the trial court, which was returned to the police for further investigation. Even after further investigation, the police has filed the negative final report. The trial court took the cognizance of offences on 16.1.2006 and, therefore, the order taking cognizance is barred by limitation as envisaged under section 468 Cr.P.C. Learned counsel for the petitioners has further contended that there is no order of condoning the delay as envisaged under section 473 Cr.P.C. He has relied on a decision of this Court in Babulal & Ors. vs. State of Rajasthan & Anr. (S.B.Cr.Revsioin No.19/1999) reported in **1999(2) WLN 14.**

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the instant case, soon after the occurrence, the FIR was lodged promptly and, therefore, the complainant has initiated the prosecution by lodging the FIR. It was the police, who consumed the time in investigating the matter and then filed the negative final report and as per the direction of the trial court, the police

further investigated the matter and even after further investigation, filed the negative final report, on which the trial court took the cognizance. The period of limitation is to be counted from the initiation of the prosecution. The controversy raised by the learned counsel for the petitioner stands concluded by the Hon'ble Supreme Court in Bharat Damodar Kale vs. State of Andhra Pradesh, **(2003) 8 SC 559,** wherein the Hon'ble Supreme Court has held as under:

> "A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the

> period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.
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> Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of the court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

Keeping in view of the aforesaid decision of the Hon'ble Supreme Court, in my view, it cannot be said that the order taking cognizance is barred by period of limitation. The judgment relied on by the learned counsel for the petitioner in Babulal & Ors. vs. State of Rajasthan & Anr. (supra) is of no help to the

petitioner in view of the decision of Hon'ble Supreme Court in Bharat Damodar Kale vs. State of Andhra Pradesh (supra).

Consequently, the petition is dismissed.

[H.R.PANWAR],J.

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